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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/595,660

06/16/2000

Eric Teller

1148/015

2830

23861

7590

07/31/2009

METZ LEWIS, LLC
11 STANWIX STREET
18TH FLOOR
PITTSBURGH, PA 15222

EXAMINER

PASS, NATALIE

ART UNIT

PAPER NUMBER

3686

MAIL DATE

DELIVERY MODE

07/31/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* ERIC TELLER, JOHN M. STIVORIC,
9 CHRISTOPHER D. KASABACH, CHRISTOPHER D. PACIONE,
10 JOHN L. MOSS, CRAIG B. LIDEN, and MARGARET A. McCORMACK
11

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13 Appeal 2009-000479
14 Application 09/595,660
15 Technology Center 3600
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18 Decided:¹ July 31, 2009
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21 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
22 ANTON W. FETTING, *Administrative Patent Judges*.

23
24 CRAWFORD, *Administrative Patent Judge*.
25

26
27 DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 104-127, 137-152, 161-164, 167, 171, 172, and 175-182. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6 (2002).

The claimed invention is directed to systems and methods for collecting and storing at a remote site data relating to an individual's physiological state, lifestyle, and various contextual parameters, and making such data and analytical information based on such data available to an individual (Specification 1:10-13).

Claim 104, reproduced below, is further illustrative of the claimed subject matter.

104. A method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, said individual wearing a wearable physiological monitoring device, the method comprising:

- establishing said physiological status goal according to certain physiological parameters of said individual;
- generating data with said wearable device, said generated data indicative of a first parameter of said individual wearing said wearable physiological monitoring device;
- generating data indicative of a second parameter of said individual with at least one of said wearable device and a second device;
- receiving data related to the life activities of said individual;
- calculating, from said first and second parameters, quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal;
- generating individual status information relating to the status of said individual from said life activities data; and

1 communicating to a recipient said calculated quantitative
2 status information regarding said individual and said individual
3 status information,

4 wherein said first and second parameters are produced by
5 at least one of said individual's body and the environment
6 adjacent said individual's body.

7 The references of record relied upon by the Examiner as evidence of
8 obviousness are:

9	Brown	US 5,913,310	Jun. 22, 1999
10	Mault	US 6,790,178 B1	Sep. 14, 2004

11 Claims 104-121, 124-127, 137-152, 161-164, 167, 171, 172, and 175-
12 182 stand rejected under 35 U.S.C. § 102(e) as anticipated by Mault; and
13 claims 122 and 123 stand rejected under 35 U.S.C. § 103(a) as unpatentable
14 over Mault in view of Brown.

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16 OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the conclusion that the applied prior art does not render unpatentable the claimed subject matter. Therefore the rejections on appeal are reversed. Our reasons follow.

The following comprise our finding of facts with respect to the scope and content of the prior art. Mault discloses physiological monitors that connect with and/or communicate with a hand-held computing device such as a personal digital assistant (PDA) (col. 1, ll. 29-32). The PDA stores testing data from one or more physiological monitor modules to allow the use of data in health and fitness tracking as well as in a variety of software applications (col. 2, ll. 52-60). Physiological monitors measure one or more

1 physiological parameters. The PDA may enable additional functionality or
2 provide processing and display of physiological data (col. 5, ll. 25-34). A
3 remote server may store and analyze data received from the PDA and
4 provide feedback based on the information (col. 7, ll. 18-20). The PDA may
5 store exercise information from a physiological module, such as a
6 pedometer, and calculate various exercise parameters such as calories
7 burned, distance covered, average speed, etc. (col. 12, ll. 14-17).

8 The disagreement between the Appellants and the Examiner is with
9 respect to whether Mault discloses calculating, from said first and second
10 parameters, quantitative status information, as recited in independent claims
11 104 and 124 (App. Br. 11-15; Ex. Ans. 19-22; and Reply Br. 2-7). Mault
12 discloses measuring and storing multiple physiological parameters from
13 multiple physiological monitors. Mault also discloses using the
14 physiological data to process, analyze, and calculate various exercise
15 parameters for use in health and fitness tracking as well as in a variety of
16 software applications. Mault does not disclose however, how the
17 physiological data is specifically used to calculate the various exercise
18 parameters. Such specific information is necessary to show that Mault uses
19 two physiological parameters to calculate the exercise parameters, as recited
20 in independent claims 104 and 124. Absent such a showing, the most
21 straightforward interpretation of Mault is that a single physiological
22 parameter is used to calculate the exercise parameter. Accordingly, as this is
23 an anticipation rejection, because Mault does not disclose calculating, from
24 said first and second parameters, quantitative status information, as recited
25 in independent claims 104 and 124, we cannot sustain the rejections of any
26 of the pending claims.

1 CONCLUSION AND ORDER

2 The rejection of claims 104-127, 137-152, 161-164, 167, 171, 172,
3 and 175-182 is reversed.

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5 REVERSED

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14 METZ LEWIS, LLC

15 11 STANWIX STREET

16 18TH FLOOR

17 PITTSBURGH, PA 15222

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